IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1324 OF 2002

WITH

NOTICE OF MOTION NO. 443 OF 2004

IN

SUIT.NO. 1526 OF 2002

Messrs. Abhishek Enterprises .. Plaintiffs.

vs.

Mathuradas Gordhandas

Trust & Ors. .. Defendants.

Mr. D.H. Mehta i/by S.R. Mishra
for plaintiffs.

Mr. Milind Vasudeo i/by A.R. Ghadge
for defendant nos. 1 to 7.

Mr. Hiralal Thakkar, Sr. Adv. i/by
Vinod Thacker for defendant nos.
9 to 13 in support of notice of
motion.

Mr. C.S. Balsara i/by N. Shah & Himaytulla
for Legal Heirs of Defendant Nos.
10, 11 & 12.

CORAM : S.U.KAMDAR, J.

DATE : 26th August, 2005.

P.C.

. The present suit is filed for specific performance of an agreement for sale dated 13.12.1995. under clause 1 of the said agreement the consideration is provided which reads as under :-

> (a) Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) paid by the Purchasers to the Vendors as earnest money or deposit on or before the execution of these presents (the payment and receipt whereof the Vendors do and each of them doth hereby admit and acknowledge)
>
> (b) Rs.5,00,000/- (Rupees Five Lakhs Only) within 15 days from the date of the Vendors obtaining the necessary consent from all the beneficiaries under the said will of the deceased.
>
> (c) Rs. 54,00,000/- (Rupees Fifty, Four Lakhs Only) being the balance on the completion of the sale."

Under clause 2 read with clause 14, the defendants nos. 1 to 8 who have entered into the said agreement as the trustees of the last will of the deceased Mathuradas Gordhandas dated 12.2.1952 have

agreed to obtain the consent of the other beneficiaries who are the legal heirs of the deceased Mathuradas Gordhandas. Admittedly, no such consent has been obtained. Mr. Balsara who is appearing for legal heirs of the said deceased defendant nos. 10, 11 and 12 contends that he is not willing to give any such consent to defendant nos. 1 to 8 for the purpose of performance of the said agreement for sale. Under the terms and conditions of the said agreement for sale, the defendant no. 1 and 8 who are the trustees have put the plaintiffs in possession of the property. However, actual, physical possession of the suit property is with the defendant no. 9. It is the case of the plaintiffs that on 7.5.95 the defendant nos. 1 to 8 i.e. the trustees of the said property have removed defendant no. 9 as the trustee of the said trust. However, the learned counsel appearing for the defendant no. 9, Mr. Thakkar contends that he is not in possession of the said property and the possession therof is with defendant no. 13. He also contends that there are other trustees apart from defendant nos. 1 to 7. None of such trustees have come before the Court raising such contentions. The defendant no. 9 who was claiming to be a trustee and who is removed on 7.5.1995 disputes his removal but he has taken no steps or initiated any proceedings challenging his removal as a trustee. However, by an ad-interim order dated 3.5.2002 this

Court has recorded in para 6 of the order as under :-

> "6. Learned counsel for defendants 9 and 10 raised the issue regarding saleability of the property itself by taking me through the recitals of the will. However, the contents of the will by itself shows whether the property in question is saleable or not would necessarily be sen at the time of final hearing after interpreting the clauses incorporated in the will in question. Moreover, it cannot be over-looked that the defendant no. 13 is evidently a prospective purchaser. it may be noted that the learned counsel for defendants nos. 9 and 13 made a statement before the court that the defendant no. 13 is not interested in enforcing the agreement executed by him in respect of the property. Be as it may, the fact remains that the right similar to that of plaintiff was in fact created in favour of defendant no. 13 and therefore, in my considered view all these aspects need to be carefully scrutinised which would be at the time of final hearing of the notice of motion, after filing of the affidavits in reply by all the concerned parties. In the meanwhile the property needs to be protected

> as it is and therefore I am inclined to grant ad interim relief in terms of prayer (b). Hence ad interim relief granted in terms of prayer clause (b)."

Thus, the defendant no. 13 even if he is in possession he is in wrongful possession and has no right whatsoever in respect of the suit property. In my opinion, the property should therefore be protected and preserved. I therefore, appoint the Court Receiver, High Court, Bombay, as the Receiver in respect of the entire property. Receiver to attorn all the partners to himself and Receiver not to disturb possession of anybody who is found in use, occupation and possession of the property as a tenant and/or a person claiming as a beneficiary or claiming through as a beneficiary. If any third party is found in possession, the Court Receiver is directed to make report to the Court for further directions. Mr. Mehta, the learned counsel for the plaintiffs states that his client is ready and willing to deposit the balance consideration as per the agreement dated 13.12.1995 i.e. sum of Rs. 59 lacs in this Court. The said amount to be deposited within a period of four weeks from today. If the amount is so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any Nationalised Bank initially for a period of one year and renew the same thereafter

from time to time till further orders. The appointment of the Court Receiver to take effect as soon as the amount is so deposited. Till that time, there shall be an interim order of injunction in terms of prayer clause (b) of the notice of motion. Prayer clause (b) will operate against all the defendants.

2. In view of the order passed in Notice of Motion No. 1324 of 2004, no further orders are necessary in Notice of Motion No. 443 of 2004. Motion is accordingly disposed of.

. Parties to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.